THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.5256 of 2005

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Dated:10.03.2006

Between:

Durgam Lancha.

..... PETITIONER

AND

The Sub-Collector, Asifabad, Adilabad District, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.5256 of 2005

ORDER:

In a dispute between the petitioner and the fifth respondent pertaining to land in Survey No.4 admeasuring Acs.10.88 cents, the fifth respondent obtained a decree for permanent injunction in O.S.No.73 of 1993 on the file of the Court of the District Munsif, Sirpur, against the petitioner. The petitioner was unsuccessful before the appellate authority in A.S.No.31 of 2003 on the file of the Court of the III Additional

District Judge (FTC), Asifabad, Adilabad District. He, therefore, filed Second Appeal, being S.A.No.1165 of 2004, and this Court by order dated 14.10.2004 in C.M.P.No.12700 of 2004 suspended the judgment of the appellate Court. The petitioner alleges that respondent Nos.2 to 4 in order to help the fifth respondent visited the suit schedule property and took away 20 quintals of Sesame (Till) yield unlawfully and also tried to interfere with his possession. The petitioner also alleges that aggrieved by the highhanded action of respondent Nos.2 to 4, he and his family members visited Sub-Divisional Police Officer, in vain. Therefore, the present writ petition is filed, *inter alia,* seeking a direction to respondent Nos.2 to 4 not to interfere with the possession of the petitioner and his family.

After receiving the notice the third respondent herein, namely the Sub Inspector of Police, Bheemini Police Station, has filed a counter affidavit stating that he never interfered with the civil dispute and denied other writ averments. Though counter affidavit is not filed on behalf of respondent Nos.1, 2 and 4, the learned Assistant Government Pleader for Revenue (General) on instructions, submits that the revenue authorities did not interfere with the land, in view of the injunction order.

It is no doubt true that the petitioner obtained an order of interim suspension in C.M.P.No.12700 of 2004 in S.A.No.1165 of 2004. As submitted by the learned Counsel for the fifth respondent, during the pendency of the appeal, being A.S.No.31 of 2003, the petitioner was not having any injunction in his favour, and therefore, the order of suspension passed in the Second Appeal does not in any manner enable the petitioner to interfere with the possession of the plaintiff. It shall be open to the petitioner herein to obtain appropriate injunction in the Second Appeal by showing that, in fact, he is in possession of the property.

In view of the counter averments denying the petition allegations, which stand unrebutted, the Writ Petition cannot be accepted, and the same is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

10.03.2006

vs